

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-3386

Richard Allen Schmidt,

Appellant,

v.

Mike Kenney; Larry Wayne; Harold
Clarke; Sharon Lindgren; Jeff Uttecht;
Mousa Drammeh; Scott Hooper; John
Munoz; Mike Salomons; Rex Richard;
Kyle Poppert; Larinda Parker; Georgia
Oehlert; Ron Limbeck; Candace Hanes;
Jane Grabenstein-Chandler; Cheryl
Flinn; Donn Beaver,

Appellees.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: September 15, 2004

Filed: September 20, 2004

Before MURPHY, FAGG, and SMITH, Circuit Judges.

PER CURIAM.

Former Nebraska inmate Richard A. Schmidt seeks to appeal from the district court's dismissal of his 42 U.S.C. § 1983 action in which he claimed deliberate indifference to his serious medical needs. Having carefully reviewed the record, we

dismiss the appeal as untimely. See Krein v. Norris, 250 F.3d 1184, 1187 (8th Cir. 2001) (jurisdiction will be raised sua sponte when there is indication it is lacking, even if parties concede issue).

Schmidt did not timely file his notice of appeal (NOA), because he filed it 47 days after the district court entered judgment, see Fed. R. App. P. 4(a)(1) (in civil case where agency of United States is not party, NOA must be filed within 30 days of district court's entry of judgment); and the district court had no authority to extend the NOA filing deadline absent a motion by Schmidt, see Fed. R. App. P. 4(a)(5) (district court may extend time to file NOA based on excusable neglect or good cause "upon motion filed" no later than 30 days after deadline for filing NOA); Campbell v. White, 721 F.2d 644, 645 (8th Cir. 1983) (Rule 4(a)(5) clearly and unambiguously requires motion, and late-filed NOA may not be considered extension motion).

Accordingly, we dismiss the appeal. See Burgs v. Johnson County, Iowa, 79 F.3d 701, 702 (8th Cir. 1996) (per curiam) (timely NOA is jurisdictional).
